

1 George Brass # 1045449

2 HOSP 1 P.O. Box 650

3 Indian Springs, NV 89070

4 Plaintiff in Pro Se

5
6 United States District Court
7 District of Nevada
8

9 George Brass,
10 Plaintiff,

Case No. 2:21-cv-00074-RFB-UCF

11 v.

Reply

12 The State of Nevada, et al,
13 Defendants
14

15 I. Introduction and Argument
16

17 Defendants do not oppose Brass's Motion for Leave to
18 Amend therefore Brass's Motion for Leave to Amend should
19 be granted. They also do not dispute his medical allegations

20 In anticipation of the Court granting Leave to Amend,
21 Brass has attached his First Amended Complaint as an
22 Exhibit to his Reply.

23 As to the Opposition to the request for sanctions, Brass
24 asks the Court to take judicial notice that the citation to
25 the AR that governs inmate access to medical files through
26 AR 639 and AR 740 and a petition for Mandamus is both
27 disingenuous and misleading.
28

1 Brass has requested to review his medical files without answer
2 or success.

3 The grievance procedure takes 45 days (informal), 45 days
4 (1st level) and 60 days (2nd level) to exhaust or 150 days.

5 A writ of mandamus requires access to the law library, a
6 knowledge of how to prepare and file, and weeks if not months
7 to litigate.

8 This would require a motion to stay these proceedings as the
9 records needed to accurately identify facts, witnesses, documents
10 and evidence to include in the pleadings and litigation.

11 or.

12 The AG's office makes one call, e-mail, or fax to the NASP
13 medical department to have Brass review his files to not delay proceedings.

14 or.

15 This Court Orders the same since it involves active litigation.
16 Let's stop the AG and NASP (and NASP from hiding behind
17 his regulations (AR 634 + AR 75D) which do not work as designed
18 or in practice. Enough. Rule 16 Initial disclosures. FRCP allow
19 pre-complaint filing discovery. Also subpoenas to issue. We avoid
20 all this by a phone call, e-mail, or text. Not "greater access"
21 (Opp. p. 4 et al) but "access" period.

22 Any doubts? Let's hold a hearing and hear from the
23 medical records + law library staff as to "3-5 working days"
24 and access to the library. The truth will not favor the State.

25 or.

26 Have the AG's office work with Brass to internally resolve
27 the issues and not squander valuable Court time.

1 II. Conclusion

2
3 Bruss is hard pressed to "point to a policy or custom" or
4 case law to address the plethora of authority cited by the
5 state when the medical records and legal reference materials
6 are not accessible to him in fact or through Rules and Regulations
7 which so limit access as to be access in theory but not in
8 practice. However his unrelated medical allegations favor his requests for relief.
9 Grant Bruss's requests or alternatively set a hearing to
10 develop actual facts and not theories of access to hold the
11 Defendants accountable, or resolve as this Court deems appropriate.

12
13 Respectfully submitted this 21 day of June 2022

14 George Bruss

15 George Bruss # 1045449

16 Plaintiff in Pro Se
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George Brass

High Desert State Prison

P.O. Box 650

Indian Springs, NV 89070

Prison Number 1045449

United States District Court
District of Nevada

George Brass,

Case No. 2:21-cv-00074-RFB-UCF

Plaintiff,

vs.

First Amended

The State of Nevada, ex rel. The NDC,

Civil Rights Complaint

Charles Daniels, Dir of the NDC;

Pursuant to

Michael Minev, Medical Dir of the NDC;

42 U.S.C. § 1983

Dr. Gregory Bryant, Dr. Wilson Bernales,

JURY TRIAL REQUESTED

Dr. David Rivas, Nursing Director,

Benjamin Gutierrez, Nurse Practitioner

Rio and Martin, Janyne Cabrera, R.N.,

Charge Nurse Nilo Peret, R.N. Nick Passos,

Adrienne Thompson, and Does 1-10

Defendants

A. Jurisdiction.

1) This Complaint alleges that the civil rights of Plaintiff George Brass who presently resides at HDSF were violated by the Defendants against Brass at HDSF / Indian Springs, NV on the following dates:

2014 to Present, 2014 to Present, and 2014 to Present

(Claim 1)

(Claim 2)

(Claim 3)

Page 1

2. Introduction

This is a civil rights action filed by George Bruss, a state prisoner, for damages and injunctive relief under 42 USC § 1983 alleging denial of medical care in violation of the Eighth Amendment to the United States Constitution.

Jurisdiction

1. The Court has jurisdiction over the plaintiff's claims of violation of federal constitutional rights under 42 USC §§ 1331 (1) and 1343.

Parties

2. The plaintiff George Bruss, was incarcerated at High Desert State Prison ("HOSP") during the events described in this complaint.

3. Defendant The State of Nevada ex rel The Nevada Department of Corrections is the state agency which operates Nevada's prisons including HOSP. It is sued in its official capacity for not providing adequate medical care and redress for Bruss.

4. Defendants Gregory Bryant, Wilson Bernales, and David Rivas were or are physicians employed at HOSP. They are sued in their individual and official capacities.

5. Defendant Michael Miner is the medical director of the NDC and is responsible for ensuring inmates receive adequate medical care and redress for the failure to provide. He is sued in his individual and official capacity.

6. Defendant Benjamin Gutierrez is the Nursing Director at HOSP and is responsible for all aspects of nursing at HOSP including staffing, supervision, continuity of care, as well as to respond or assign for response medical requests for treatment.

1 or "Kites", grievances as well as those responsibilities under the MDOC's
 2 Administrative Regulations (AR's) and HOSP's Operational Procedures (OP's).
 3 He is sued in his official and individual capacity.

4 7. Defendant Nurse Practitioners Rio and Martin are
 5 employed at HOSP to assist with evaluating inmates' medical needs
 6 and can recommend and order medications, tests, and treatment
 7 plans. They are sued in their individual capacities.

8 8. Defendant Jaymie Cabrera is the medical case manager
 9 at HOSP and is generally responsible for ensuring provision of
 10 medical care to prisoners and specifically for scheduling medical
 11 appointments outside the prison when a prisoner needs specialized
 12 treatment or evaluation. She is sued in her individual and official
 13 capacities.

14 9. Defendant Adrienne Thompson is believed to share the
 15 scheduling responsibilities with Defendant Cabrera, para 8, supra,
 16 and is sued in her individual and official capacities.

17 10. Defendant Nilo Peret was employed as a charge Nurse
 18 working under HOSP's Director of Nursing Services to supervise
 19 HOSP's nursing staff, provide direct care to inmates in all
 20 forms (infirmary appointments, emergent care ("maw-down"), other)
 21 as well as assist with responding to Kites (supra), grievances,
 22 and in-person requests. He is sued in his individual and
 23 official capacities.

24 11. Defendant Nick Parsons is employed as a Registered
 25 Nurse at HOSP and assist the nursing director, charge nurse,
 26 and provides direct care to inmates through pill calls, and the
 27 response to Kites and grievances, as well as maw downs.

12. Defendant John Drees (1-10) are medical staff whose names are presently unknown to plaintiff. They are sued in their individual and official capacities.

13. All of the Defendants have acted, and continue to act, under color of state law at all times relevant to this Complaint.

Facts

Nature of the Case

14. Plaintiff files this Complaint to seek relief and damages as a result of the Defendants deliberate indifference to his serious medical conditions to wit:

a) a compressed spine (claim one)

b) nerve damage to both hands (claim two);

c) Failures to provide medications and recommended care (claim three)

As a result Plaintiff's 6th Amendment Rights have, and continue to be violated, causing him continuing damage, pain, and suffering.

15. Plaintiff believes, and thereupon alleges, his requests for medical care were communicated through his interaction with pill call nurses and through kites and grievances that were read, evaluated and responded to by Defendants Pearson (in person, kites, informal grievances), Peret (in person at infirmary appointments, 1st level grievances, kites), Defendant Gutierrez (grievances, all levels, kites), Defendants Bryant, Bernales, and Rivas (in person and in kites, grievances in consult with Gutierrez, Peret and other nursing Defendants), and Defendant Mineo who's second level grievance responses effected continuity of care and his confering with Bryant, Bernales, Rivas as well as Gutierrez as to continuity of care.

Facts Common to All Claims

1 Plaintiff George Brass (hereinafter "Brass") is an inmate incarcerated at
2 HDSP which has, and continues to be on a modified lockdown due to the Covid-19
3 pandemic.

4 Brass specifically brings this Complaint as to the actions, inactions, failures
5 and deliberate actions of the Defendants from 2019 to the present as reflected
6 in his medical files, grievances, kites and other communications (such as
7 from Brass's family, friends, outside counsel, case workers), custody staff
8 and others) to NDOC/HDSP officials, staff and Defendants.

9 These communications are contained in Brass's medical files, Institutional
10 or "I" file, Central or "C" file, and on NOTIS (Nevada Offender Tracking
11 Information System) none of which are accessible to Brass. Similarly,
12 Brass is informed and believes the outside medical care provider records
13 also substantiate the allegations contained in this Complaint.

14 Without access to these records, which will take an order of this
15 Court, Brass cannot fully and accurately identify all the facts, witnesses,
16 documents and other evidence needed to draft this Complaint and will
17 seek leave to amend once the Court allows him access. NDOC regulations
18 prohibit inmates from possessing medical records without a Court order.

19 As further set forth in the following claims, Brass has been dealing
20 with the effects of a compressed cervical spine (claim one), nerve damage to
21 both hands (claim two), and failures to provide medications and recommended
22 care (claim two). The continued delay(s) in surgery only makes the
23 symptoms worse, increasing pain, suffering and the likelihood that the
24 nerve damage could become permanent. The denial, delay and running
25 out of prescribed medications exacerbates the situation. The combined
26 effect on Brass is loss of function, decrease in ability to perform daily
27 activities without pain, suffering, or at all.

1 Brass further alleges he has either exhausted all of the issues raised
 2 in this Complaint and for in the alternative, is asking that he be excused
 3 from a grievance procedure that is futile. Furthermore, Brass alleges
 4 that the NOOC and HOSP's failure to comply with the time limits of
 5 its own Administrative Regulations as to Grievances (responses to
 6 Informal Grievance, 45 days; 1st level, 45 days; and 2nd level,
 7 60 days) acts as a waiver of the defense of failure to exhaust.

8 The failure to properly administer the grievance process also
 9 frustrates Brass's ability to timely exhaust as to have his issues
 10 informally resolved or exhausted as to seek review by a Court and
 11 intervention and relief for claims that if not addressed, *suma*,
 12 can and will cause further pain, suffering, and damage.

13 Despite having knowledge of Brass's medical condition, needs and
 14 grievances the Defendants remain deliberately indifferent:

15 Defendant Doctors Bryant, Bernales, and Rivas, individually and collectively
 16 (as members of the utilization review panel) did not provide Brass with adequate
 17 care, medications and follow-up treatment with outside specialists.

18 Brass has submitted repeated requests for treatment and has filed
 19 grievances requesting adequate care, medications and follow up care with
 20 outside specialists

21 When a prisoner files a grievance, the grievance staff calls the matter
 22 to the attention of those individuals responsible for the matter the grievance
 23 concerns.

24 Defendants Parsons, Peret, and Gutierrez were responsible or assigned
 25 to review and respond to Brass's medical letters and grievances at the
 26 informal and first level.

27 Defendants Juynne Cabrera and Adrienne Thompson are responsible
 28 for medical care generally and for arranging for specialized medical care

outside the prison.

Defendants Rio and Martin met with Brass and/or reviewed his requests for care and failed to help Brass.

Defendant Mineo is responsible to ensure the care Brass receives complies with the AR's, OP's, ACA standards, NRS 201 et al, as well as State and Federal law (6th Amendment).

Mineo also has the duty, responsibility and ability to intervene to correct deficiencies through his role as chair of the VAP, and through the grievance procedure (as the designated 2nd level responder) and did not do so for Brass.

Defendant Director Daniels and his agency the NOK have a duty under the color of law, NRS 201 et al, the AR's, OP's, and Nevada and U.S. Constitutions to ensure inmates are provided adequate medical care and did not do so for Brass.

As set forth in the following three causes of action, Brass's 6th Amendment Rights were and are being violated by the Defendants individually, collectively and in concert with the denial and refusal to address Brass's serious medical condition.

Brass was, and is, in great pain.

On information and belief, if Brass does not receive follow-up care he risks permanent disability.

C. Causes of Action

CLAIM 1: Compressed spine

The following civil rights have been violated: 8th Amendment Prohibition Against Cruel and Unusual Punishment. Defendants also deliberately indifferent to Plaintiff's serious medical condition.

Supporting Facts:

Bruss incorporates pp 1-3, ~~3000~~ as though fully set forth herein. On or about March of 2019 Bruss noticed he began having trouble performing daily tasks as he experienced pain in his back and neck.

As the pain became worse and effected him more and more he began the process of seeking medical care in writing (letters at first and then grievances), electronically (by a kiosk system no longer in use) and in person to medical staff who are in the unit to deliver medications at what is referred to as pill calls.

With access to his medical records, Bruss is informed and believes the following, a timeline of relevant events.

On or about March 19, 2020, Bruss was taken to Valley Hospital who ordered an MRI to diagnose his condition.

During the month of April 2020:

- On April 19, 2020 the Defendants discontinued the medication buckafen (Def. Dr's Bryant, Bernales and/or Rivas)

- On April 30, 2020 Bruss has X-rays and blood tests at HOSP

- On April 24, 2020 Bruss taken to Valley Hospital and told he needed an MRI and Cat Scan.

- On April 29, 2020, Bruss requested emergency care ("man down") and taken to Sunrise Hospital - no neurologist available

On or about May 5, 2020 Bruss went man down and had a

Claim One Continued

1 consultation with HQSP provider Rio, who, incredibly, despite test results
 2 and examinations to the contrary suggested Bruss could feign his condition.
 3 On or about June 2, 2020 Bruss had an MRI scan done of his head,
 4 cervical spine and lumbar region.
 5 On June 15, 2020 Bruss had his blood drawn at HQSP and also
 6 had his medications (muscle relaxers) discontinued. (Def's Bryant, Beaulieu and/or Rios)
 7 On June 23, 2020, Bruss met with Rio to discuss the MRI results
 8 which showed a compressed spine. Rio failed to provide follow-up care/treatment.
 9 On July 17, 2020, Bruss completed and submitted a pre-surgical packet.
 10 On July 29, 2020, Bruss was transported ~~late~~ to a surgical consult at
 11 Valley Hospital which was cancelled.
 12 On August 10, 2020 Bruss was required to complete a new packet for
 13 surgery with a different surgeon.
 14 On August 13, 2020 Bruss was transported late to the surgical consult
 15 which was cancelled.
 16 On or about August 14, 2020 Bruss was prepared for surgery.
 17 Bruss initiated oral, written, and other methods (outside assistance) to
 18 find out why he wasn't being sent out for surgery. (Def's Cabrera, Gutierrez, Peret,
 19 Parsons and Bryant)
 20 On October 12, 2020 Bruss received physical therapy.
 21 On October 21, 2020 Bruss was taken to a hand specialist who
 22 informed him of the nerve damage to both hands, carpal tunnel, and the
 23 need for surgery. See, Claim Two, pp 5, 56).
 24 Bruss again initiated oral, written, and other methods, supra, to find out
 25 why he wasn't being sent out for surgery or surgeries. (Def's Cabrera, Gutierrez,
 26 Peret, Parsons and Bryant)
 27 On or about December 9, 2020, Bruss was instructed to discontinue
 28 certain medications, food, and otherwise prepare for surgery in ten days.
 29 Bruss initiated oral, written, and other methods, supra, to find out why
 30 he isn't being transported for surgery or surgeries. (Def's Minev, Bryant, Cabrera,
 31 and Gutierrez.)

Claim One Continued

1 As Brass's condition continues to deteriorate, the symptoms of his compressed
 2 cervical spine become worse. Brass also has to deal with the knowledge that
 3 a compressed cervical spine can, without intervention and treatment, lead to
 4 paralysis. Some of the symptoms, include but are not limited to numbness and
 5 tingling in limbs and extremities, difficulty walking, moving, sitting (including
 6 for a bowel movement), sleeping and debilitating pain and suffering.
 7 Defendants, and each of them, are responsible for the pain, suffering, and
 8 damage caused to Brass.

9 Brass is informed and believes, and thereupon alleges, that his compressed
 10 cervical spine would not require surgical intervention and possible irreversible
 11 and permanent damage with earlier intervention and treatment.
 12 Furthermore, the violation of ~~Brass's~~ Brass's 8th Amendment Rights is the
 13 direct result of policies the Defendants' were and are aware of before, during,
 14 and after Brass's was discovered to have a compressed cervical spine, and
 15 still exist.

16 The State of Nevada and the NDOC, the NDOC Director and the other named
 17 Defendants are well aware of the problems with understaffing at HOSP, the
 18 largest NDOC facility (approximately 4,000 inmates) has 4 wardens, yet only
 19 one doctor (M-Th daytime only); the failure and untimely response, if
 20 any, to requests for treatment, refills, emergency care, and assistance;
 21 grievances ignored, delayed, and denied such that it prevents medical
 22 issues from being addressed, and as to Brass, actively interfered with
 23 diagnosis, continuity of care and treatment plans brought to the
 24 Defendants attention through kites, grievances, in person and in
 25 writing -

26 This Deliberate indifference is a violation of Brass's 8th Amendment
 27 Rights and entitles him to the damages and other relief found in
 28 section "D", page 9 of this Complaint.

CLAIM 2: Nerve Damage Both Hands

The Following civil rights have been violated: 8th Amendment Prohibition Against Cruel and Unusual Punishment. Defendants also deliberately indifferent to Plaintiff's Serious Medical Condition.

Supporting Facts:

Brass in corroborates pp 1-3 (and sub parts), 4 (and sub parts), as though fully set forth herein, and to that adds the following:

As discussed in Claim one, supra, Brass only became aware of the nerve damage to his hands when he was transported to meet with a surgeon (different doctor than the one he met with as to his compressed spine) who advised Brass he suffered from nerve damage and carpal tunnel that had progressed to the point that it would require surgery. This was in October of 2020.

Prior to the consultation with the surgeon in August of 2020 the condition as to his hands was not revealed in consultations with the Defendants who either intentionally concealed the results of diagnostic testing or prescribed him medications that would mask the condition, not treat it, causing further damage and loss of function.

Since the diagnosis, surgical consultation, Brass has sent requests for treatment, medications and surgery (kites), grievances, and sought outside assistance to determine why the delay in his surgery, which has been from October 2020 to present, almost three (3) months, (Deis Cabrera, Bryant, Miner, Gutierrez, Parsons and Peret).

Since the condition(s) affect both of his hands, it adversely impacts every aspect of his ability to function, including, but not limited to hygiene, lifting and moving objects, writing, and just about any activity that involves the use of his hand or hands.

As the condition progressively gets worse, Brass is reminded

1 that the surgeon advised him in ~~October~~ that the damage diagnosed back
 2 then could have been prevented if caught sooner.

3 The Defendants had the opportunity to examine Brass, and to evaluate
 4 the diagnostic tests, and outside provider interpretation and reports, as
 5 to prevent the damage finally revealed to Brass in ~~October~~ of 2020,
 6 and which may be irreversible and permanent with the delay in surgery.

7 Brass therefore specifically brings Claim 2 as to his harms for the actions,
 8 failures and deliberate indifference of the Defendants from 2019 to the present.
 9 As to the failure, refusal and delay in providing proper, timely treatment and
 10 follow up care which has caused and continues to cause further damage,
 11 pain and suffering, interferes with Brass's ability to function, and
 12 exacerbates his other medical condition

13 Brass is not a doctor or trained medical professional. The outside
 14 providers (Sunrise Hospital, Valley hospital, the diagnostic imaging
 15 and surgical consults) records, reports and other documents will substantiate
 16 further Brass's claims that the failure to provide him care for his serious
 17 medical conditions (in all forms) was, and is, deliberate indifference
 18 entitling him to damages and other relief.

19 Brass believes, and alleges, the outside specialist(s) sent his medical records
 20 and recommendations to Cabrera, Bryant (referring physician) where they were
 21 discussed with Mineu at URP meetings but no action taken.

22 Brass's visits, grievances and discussions with Parsons, Rio, Martin, Peret
 23 put them and Bryant, Mineu and Cabrera on notice of Brass's medical
 24 issues and concerns yet none of them intervened or advocated on his
 25 behalf resulting in a discontinuing of his continuity of care and
 26 puts Brass at risk for permanent disability.
 27
 28

CLAIM 3: Failure to provide medications and recommended care

The following civil rights have been violated: 8th Amendment Prohibition Against Cruel and Unusual Punishment. Defendants also deliberately indifferent to Plaintiff's serious medical condition.

Bruss incorporates pp 1-3 (and subparts), 4 (and subparts) and 5 (and subparts) as though fully set forth herein and to that adds the following:

As set forth in claim one and claim two, Bruss was prescribed medications, diagnostic tests, therapies, and was approved for surgery for both conditions.

As set forth in the facts common to all claims, Bruss will need Court ordered access to his medical records and other files to set forth the facts, witnesses, documents and other evidence to support this claim. Therefore, on information and belief Bruss alleges as follows:

Prior to being referred out to outside of the prison specialists, Bruss was alternatively prescribed muscle relaxers and other medications that were denied, delayed, and/or allowed to run out or expire denying him care, treatment and the infliction of pain suffering and further damage by Def's Bryant, Branks, Pinos and others. Kites, oral requests, and then grievances were either unresponded to, denied, or delayed as to result in a disruption in continuity of care, damage, pain and suffering by Def's Pinos, Poel and Gutierrez + minor.

This destructive and intentional course of conduct by the Defendants unfortunately continued as Bruss's condition deteriorated and he was seen by outside health care providers.

When Bruss was transported to outside facilities, he was both handcuffed and in leg restraints and not allowed to take any notes, or given copies of any recommendations, treatment plans or prescriptions.

Claim Three continued

Bruss is informed and believes he has and continues to be denied:

- surgery to address his compressed spine
- surgery to address the nerve damage and carpal tunnel to his hands
- gabapentin
- other medications prescribed by the outside medical care providers

As to the medications Bruss is being provided

- the ~~gabapentin~~ ^{gabapentin} has been stopped by Det's Bryant, Berwales and Rivas.
- Lyrica not provided until September 2, 2020 and since discontinued, supra
 - the prison 'Runs out' resulting in a disruption in the continuity of care (skipped doses) and worsening of symptoms and adverse effect on daily functioning.

The Defendants are well aware of Bruss's serious medical conditions through the medical examinations, diagnostic testing, and outside provider consultations and multiple requests for medications, further testing and surgeries, which was approved through medical staff both at HOSP and at the NSOC, and addressed in grievances, Kites and consultations with Bruss.

The denials, delays, and interruptions to the continuity of care were the result of deliberate indifference of the Defendants which has caused, and continues to cause Bruss pain, suffering and damages to his serious medical conditions.

Cabrera failed to obtain approval and/or schedule follow-ups or with the assistance of Defendant Adeline Thompson.

The physician Defendants (Bryant, Berwales and Rivas) allowed Bruss's medications and treatments to stop, expire at great risk to Bruss.

Nursing Defendants Pursons, Peret and Gutierrez ignored, delayed or denied Kites and grievances which could have addressed the situation.

Defendant Mince ignored outside calls and failed to intervene on Bruss's behalf allowing the harm to continue without redress.

9) Have you filed other actions in state or federal courts involving some or similar facts as involved in this action? Circle one: Yes or No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page answering the following questions).

a)

b)

c)

not applicable

d)

e)

f)

10) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted? Circle one: Yes or No. If your answer is "Yes" describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page answering the following questions.)

-NONE - LAWSUITS # 1, 2, or 3

a)

b)

c)

Not Applicable

d)

e)

f)

D. Request for Relief

I believe I am entitled to the following relief:

- Damages as to all claims as allowed by law according to proof
- Injunctive Relief as allowed by law and deemed appropriate;
- Declaratory Relief as deemed appropriate;
- Any other necessary and proper relief allowed by law under the facts and circumstances

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 USC § 1746 and 18 USC § 1621.

Law clerk(s) at HOSP

(Name of person who prepared or helped prepare this complaint if not the plaintiff)

George Brass

(Signature of plaintiff)

George Brass # 1045449

6-27-2022

(date)